

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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MARTIN PEREZ and JENICE PEREZ,

Plaintiffs,

CIVIL ACTION NO.:08-cv-3739 (DAB)

-against-

NOTICE OF REMOVAL

DIVERSIFIED TRANSPORTATION
CONCEPTS, INC., and RYAN ARNOLD
LOTZ,

Defendants.
-----X

PLEASE TAKE NOTICE, that on this date, defendants DIVERSIFIED TRANSPORTATION CONCEPTS, INC., and RYAN ARNOLD LOTZ, by their undersigned counsel, have filed this Notice of Removal pursuant to 28 USC §1446(a) in the office of the Clerk of the United States District Court for the Southern District of New York.

Defendants, by their undersigned counsel, show:

1. Plaintiffs, MARTIN PEREZ and JENICE PEREZ, brought an action against the defendants in the Supreme Court of the State of New York, County of Bronx, by filing a Verified Complaint on or about December 7, 2007. A true copy of the Verified Complaint is annexed hereto as Ex. A.

2. The Summons and Verified Complaint were received by defendant DIVERSIFIED TRANSPORTATION CONCEPTS, INC. on April 15, 2008. A true copy of the Summons is annexed hereto as Ex. B.

3. The Summons and Verified Complaint were not received by defendant RYAN ARNOLD LOTZ to date. A true copy of the Summons is annexed hereto as Ex. B.

4. There have been no other proceedings in this action.

5. Plaintiffs, MARTIN PEREZ and JENICE PEREZ, purport to be citizens and residents of the State of New York residing within the County of Bronx. *Please see* Ex. A and Ex. B.

6. Defendant, DIVERSIFIED TRANSPORTATION CONCEPTS, INC., is a citizen and resident of the State of Pennsylvania and a corporation incorporated pursuant to the laws of the State of Pennsylvania with its principal place of business in Throop, Pennsylvania, County of Lackawanna.

7. Defendant, RYAN ARNOLD LOTZ, is a citizen and resident of the State of

Pennsylvania, residing in Clarks Summit, Pennsylvania, County of Lackawanna.

8. In paragraph 8 of the Verified Complaint, plaintiff Martin Perez alleged, that as result of the subject accident, he sustained "severe and serious injuries." *Please see Exhibit A.*

9. In paragraph 11 of the Verified Complaint, plaintiff Martin Perez alleged, that as result of the subject accident, he "was personally injured and suffered serious injuries as defined by 5012(d) of the Insurance Law of the State of New York." *Please see Exhibit A.*

10. In paragraph 13 of the Verified Complaint, plaintiff Martin Perez alleged, that as result of the subject accident, he "was injured both internally and externally, and that he became sick, sore, lame and disabled and so remains, and [] that his injuries are and will be permanent and progressive in their nature and competently caused aftereffects; and that plaintiff did and still continues to have pain and to suffer from the injuries sustained by him, and was hospitalized and did and will continue to suffer from the injuries sustained by him, and was hospitalized and did and will continue to receive hospital and medical treatment and attention, all in an endeavor to cure himself of the injuries sustained." *Please see Exhibit A.*

11. Based on the aforementioned allegations of personal injury set forth in the plaintiffs' Verified Complaint, the matter in controversy is alleged to be in excess of \$75,000.00, together with costs and disbursements.

12. Jurisdiction over the subject matter of this action is conferred on this Court by 28 USC §1441(a).

13. Jurisdiction on this Court is proper pursuant to 28 USC §1332 and 28 USC §1441 in that the parties are of complete diversity, the amount in controversy exceeds \$75,000, exclusive of interest and costs, and no defendant is a citizen of the State of New York.

14. This Notice is filed with this Court within 30 days of defendants' receipt "through service or otherwise, of a copy of the initial pleading setting forth the claim for relief upon which such action or proceeding is based," as provided by 28 USC §1446(b).

PLEASE TAKE FURTHER NOTICE, that defendants, upon filing the Notice of Removal in the office of the Clerk of the United States District Court for the Southern District of New York, have also filed a copy of the Notice with the Clerk of the Supreme Court of the State of New York, County of Bronx, 851 Grand Concourse, Room 118, Bronx, New York 10451, to effect removal of this action

to the United States District Court pursuant to 28 USC §1446(d).

Dated: New York, New York
April 17, 2008

LAW OFFICES OF LORNE M. REITER, LLC
Attorneys for Defendants
DIVERSIFIED TRANSPORTATION CONCEPTS, INC., and
RYAN ARNOLD LOTZ
14 Wall Street, 20th Floor
New York, New York 10005
(212) 222-0955
Our File Number: 001-0099-MPY

BY:



LORNE M. REITER (LR6464)

TO: Kerner & Kerner
74 Trinity Place
New York, New York 10006

EXHIBIT A

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX

MARTIN PEREZ and JENICE PEREZ,

Plaintiffs,

-against-

VERIFIED COMPLAINT

DIVERSIFIED TRANSPORTATION CONCEPTS,
INC. and RYAN ARNOLD LOTZ,

Defendant.

Plaintiffs, MARTIN PEREZ and JENICE PEREZ, by their attorneys, KERNER & KERNER, ESQS., complaining of the defendants, DIVERSIFIED TRANSPORTATION CONCEPTS, INC. and RYAN ARNOLD LOTZ, upon information and belief, respectfully sets forth and alleges:

AS AND FOR A FIRST CAUSE OF ACTION

1. That at all times hereinafter mentioned, plaintiff were and still are residents of the County of Bronx, City and State of New York.
2. That at all times hereinafter mentioned, DIVERSIFIED TRANSPORTATION CONCEPTS, INC. (hereinafter referred to as "DIVERSIFIED") was and still is a corporation organized and existing under the laws of the State of Pennsylvania.
3. That at all times hereinafter mentioned, defendant RYAN ARNOLD LOTZ (hereinafter "LOTZ") was and still is a resident of the State of Pennsylvania.
4. That at all times hereinafter mentioned, plaintiff, MARTIN PEREZ, was an occupant and/or operator of a motor vehicle at the time and place hereinafter set forth.
5. That at all times hereinafter mentioned DIVERSIFIED was the owner of a certain motor vehicle bearing 2007 Pennsylvania license plate number AF06101.

6. That at all times hereinafter mentioned the said motor vehicle owned by defendant DIVERSIFIED was operated by co-defendant LOTZ with the permission and consent of the said owner thereof.

7. That at all times hereinafter mentioned, I95/Cross Bronx Expressway, in the vicinity of Rosedale Avenue, in the Borough and County of Bronx, City and State of New York, were and still are public highways for use by members of the public for purposes of traveling and transportation.

8. That on or about the 28th day of August, 2007, at approximately 7:30 P.M., while plaintiff MARTIN PEREZ and defendant LOTZ, was so operating their respective motor vehicles, as aforesaid, on I95/Cross Bronx Expressway, in the vicinity of Rosedale Avenue, in the Borough and County of Bronx, City and State of New York, the said defendant did come into contact with, strike and/or collide with each other, as a result of which plaintiff MARTIN PEREZ was precipitated in the aforesaid vehicle in which he was an occupant, causing plaintiff to sustain severe and serious injuries as more fully hereinafter set forth.

9. That the said occurrence and resulting injuries to plaintiff MARTIN PEREZ were caused in no way by the negligence of said plaintiff, but wholly and solely by reason of the negligence of the defendants, in that the said motor vehicle of defendants was owned, operated and controlled in a careless, reckless and dangerous manner; in that defendant LOTZ did operate his aforesaid motor vehicle at a high, excessive and unlawful rate of speed under the circumstances, and did fail and neglect to exercise reasonable care in the premises or to properly control said motor vehicle; in that said defendant did fail and neglect to take notice of the motor vehicle of said plaintiff, or to give any signal or warning of his approach, or to stop, slow down or otherwise control said motor vehicle so as to prevent damages and injuries to others in other

motor vehicles, of which class plaintiff was a member; in that said defendant did fail and neglect to observe the proper flow of traffic at the place of the occurrence; in that said defendant failed to keep a proper lookout; in that said defendant did violate the applicable laws, statutes, ordinances, rules and regulations relating to safe driving in the City and State of New York; in that said defendant did operate the aforesaid motor vehicle with defective brakes, braking devices, steering mechanisms and/or other safety appliances, equipped or required to be equipped on said motor vehicles; in that said defendant did not have the said motor vehicle under proper control at the time and place of the within occurrence; in that defendants' motor vehicle struck the plaintiff's motor vehicle in the rear; in that defendants were negligent under the doctrine of res ipsa loquitur; and in that said defendants were otherwise careless and negligent under all of the circumstances.

10. That the accident and injuries occasioned to plaintiff MARTIN PEREZ resulting therefrom, were caused solely by the negligence on the part of defendants, without any negligence on the part of plaintiff contributing thereto.

11. That solely as a result of the aforesaid negligence of defendants, plaintiff MARTIN PEREZ was personally injured and suffered serious injuries as defined in Section 5102(d) of the Insurance Law of the State of New York ("Comprehensive Automobile Insurance Reparations Act") and the applicable New York laws pertaining thereto.

12. That as a result of the foregoing, plaintiff MARTIN PEREZ suffered, and will continue to suffer, basic economic loss, as well as other economic losses and special damages.

13. That as a result of the foregoing, plaintiff MARTIN PEREZ was injured both internally and externally, and that he became sick, sore, lame, and disabled and so remains, and upon information and belief, that his injuries are and will be permanent and progressive in their nature and competently caused aftereffects; and that plaintiff did and still continues to have pain and to suffer from the injuries sustained by him, and was hospitalized and did and will continue to

to suffer from the injuries sustained by him, and was hospitalized and did and will continue to receive hospital and medical treatment and attention, all in an endeavor to cure himself of the injuries sustained herein, and that money was and will necessarily continue to be spent and obligations incurred for hospitalization, medical and nursing aid and attention, all in an endeavor to cure or alleviate him suffering.

14. That this action falls within one or more of the exceptions set forth in CPLR 1602.

15. That as a result of the foregoing, plaintiff MARTIN PEREZ sustained damages in a sum exceeding the jurisdictional limits of all lower courts which would otherwise have jurisdiction herein.

AS AND FOR A SECOND CAUSE OF ACTION

16. Plaintiffs repeat and reallege each and every allegation contained within the First Cause of Action hereof as is more fully hereinafter set forth.

17. That plaintiff JENICE PEREZ is the wife of plaintiff MARTIN PEREZ and that as such is entitled to the services and consortium of her husband, MARTIN PEREZ, and that as a result of the within occurrence, has been and will be deprived of his services and consortium for some time to come and that the plaintiff, JENICE PEREZ, has provided substantial nursing and other care and attention, on behalf of her said husband, all in an endeavor to alleviate his suffering and cure the injuries sustained by him as a result of the within occurrence.

18. That as a result of the foregoing, JENICE PEREZ sustained damages in the sum exceeding the jurisdictional limits of all lower courts which would otherwise have jurisdiction herein.

WHEREFORE, plaintiffs MARTIN PEREZ and JENICE PEREZ demand judgment against defendants DIVERSIFIED TRANSPORTATION CONCEPTS, INC., and RYAN ARNOLD LOTZ, in a sum exceeding the jurisdictional limits of all lower courts which would

otherwise have jurisdiction herein, all together with the costs and disbursements of this action.

KERNER & KERNER

By: 

Richard A. Kerner
Attorneys for Plaintiff
Office & P.O. Address
74 Trinity Place, Suite 1402
New York, New York 10006
(212) 964-1098

ATTORNEY'S VERIFICATION

STATE OF NEW YORK :
ss.:
COUNTY OF NEW YORK :

Richard A. Kerner, an attorney, duly admitted to practice law before the Courts of the State of New York, under penalties of perjury, affirms:

1. I am associated with the attorneys for the plaintiffs in the above referenced matter and as such am fully familiar with all of the facts and circumstances hereinafter set forth.
2. I have read the annexed Complaint in the within matter and know the contents thereof to be true to my knowledge, except those matters therein which are stated to be alleged on information and belief, and as to those matters I believe them to be true. My belief, as to those matters therein not stated upon knowledge, is based upon books, records, documents, papers, etc. contained within my file herein.
3. The reason I make this affirmation instead of plaintiffs is because plaintiffs reside outside of the county where your affirmant maintains his office.

Dated: New York, New York,
November 9, 2007.

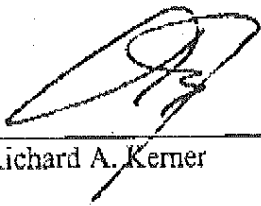

Richard A. Kerner

EXHIBIT B

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX

Index No.: 303 459/07

MARTIN PEREZ and JENICE PEREZ.

Filed On: 11/7/07

Plaintiffs.

-against-

Plaintiff designates
Bronx County as
the place of trial.

DIVERSIFIED TRANSPORTATION CONCEPTS,
INC. and RYAN ARNOLD LOTZ.

The basis of venue is
Plaintiff's residence and
the place of the occurrence.

Defendants.

SUMMONS

Plaintiff resides at
120 Elgar Place
Bronx, NY 10475

To the above named Defendant(s)

YOU ARE HEREBY SUMMONED to answer the complaint in this action and to serve a copy of your answer, or, if the complaint is not served with this summons, to serve a notice of appearance, on the Plaintiffs' Attorneys within 20 days after the service of this summons, exclusive of the day of service (or within 30 days after the service is complete if this summons is not personally delivered to you with the State of New York); and in case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the complaint.

Dated: New York, New York.
November 9, 2007.

KERNER & KERNER

By: 

Richard A. Kerner
Attorneys for Plaintiff
Office & P.O. Address
74 Trinity Place, Suite 1402
New York, NY 10006
(212) 964-1098

Defendants' address(es):

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
MARTIN PEREZ and JENICE PEREZ,

Plaintiffs,

-against-

DIVERSIFIED TRANSPORTATION
CONCEPTS, INC., and RYAN ARNOLD
LOTZ,

Defendants.
-----X

CIVIL ACTION NO.:

AFFIRMATION OF SERVICE

LORNE M. REITER, ESQ. affirms as follows:

1. I am an attorney at law of the State of New York duly admitted to practice before the United States District Court, Southern District of New York. I represent the defendants DIVERSIFIED TRANSPORTATION CONCEPTS, INC., and RYAN ARNOLD LOTZ. As such, I am fully familiar with the facts set forth herein.

2. I hereby certify that on this date, I served a copy of the within Notice of Removal upon plaintiffs in this action by mailing same via regular mail, from 14 Wall Street, New York, New York, addressed to plaintiffs' attorney, Kerner & Kerner, 74 Trinity Place, New York, New York 10006.

3. I also certify that on this date, I caused a copy of the Notice of Removal to be filed with the Clerk of the Supreme Court of the State of New York, County of Bronx at the courthouse located at 851 Grand Concourse, Room 118, Bronx, New York 10451.

4. Pursuant to 28 U.S.C. Section 1746, I certify under penalty of perjury that the foregoing is true and correct.

Dated: New York, New York
April 17, 2008

LAW OFFICES OF LORNE M. REITER, LLC
Attorneys for Defendants
DIVERSIFIED TRANSPORTATION CONCEPTS, INC., and
RYAN ARNOLD LOTZ
14 Wall Street, 20th Floor
New York, New York 10005
(212) 222-0955
Our File Number: 001-0099-MPY

BY:



LORNE M. REITER (LR6464)